**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE SIDE, JURISDICTION**

**CRIMINAL APPEAL No. 753 OF 2001**

Gajanan Pandit Patil, )
Age: about 23 years, )
R/o N-52/SF-4/8/2, )
CIDCO, Nashik. )
Presently in judicial )
custody at Central Prison )
Nashik. ) **APPELLANT (Orig.Accused)**

**Versus**

The State of Maharashtra, )
through Police Head Constable)
Shri Shantaram Runza Sarode, )
Buckle No.252, Ambad Police )
Station, Tq. & Dist.Nashik. ) **RESPONDENT**

. . .

Mr.D.S.Sapkale, Advocate for the Appellant.

Mrs.V.R.Bhosale, A.P.P. for the State.

. . .

**CORAM : N.V.DABHOLKAR & SMT.V.K.TAHILRAMANI, JJ.**

**DATED : MARCH 02, 2006.**

**ORAL JUDGMENT (PER TAHILRAMANI, J.) :**

. Through this Appeal, the appellant i.e. original accused has challenged the judgment and order dated 26th July, 2001 passed by the learned Sessions Judge, Nashik in Sessions Case No.117 of 2000. By the said judgment and order, the learned

Sessions Judge convicted the appellant under Section 302 of IPC and sentenced him to R.I. for life and to pay a fine of Rs.500/-, in default R.I. for one month.

2. The prosecution case, briefly stated, is as under :

. The appellant was married to deceased Pushpa on 23rd March, 1998. At the time of the incident the appellant was residing with his wife Pushpa at Uttamnagar, CIDCO, Nashik. They were residing in a room, which was given to them on rent by P.W.3 Nivrutti Bodake. The accused suspected the character of his wife Pushpa (deceased) and harassed and beat Pushpa on account of the said suspicion. Pushpa revealed this fact to her maternal uncle i.e. P.W.2 Bapusaheb Ingale as well as to her father i.e. P.W.5 Raghunath Marathe. On 31-01-2000, Pushpa was found dead in her matrimonial home. A ligature mark was found on her neck. The appellant informed the Police that his wife was found dead in his house. The said information was given to P.W.6 Police Head

Constable Sudam Mahajan. The said information is at Exh.23. A.D. was registered on the information given by the appellant. P.W.6 P.H.C. Sudam told P.W.1 Police Constable Shantaram Sarode to go to the house of appellant and to draw inquest panchnama. P.C. Sarode alongwith the appellant went to his house. He saw dead body of a woman. The accused/appellant informed him that the dead body was that of his wife Pushpa. Sarode noticed a mark of rope around the neck of the dead body suggesting strangulation. He also noticed abrasions on the wrists of the dead body. P.C.Sarode suspected as it was a case of culpable homicide and hence he informed P.W.9 P.S.I.Chavan about this fact. Hence P.S.I. Chavan went to the spot and examined the dead body of Pushpa. He found ligature mark on the neck of Pushpa and he also found scratch marks on both the wrists and ankles of Pushpa. P.W.9 P.S.I. Chavan informed this fact to P.I. Deshmukh. Thereafter, P.W.1 Sarode gave First Information Report. The offence of murder came to be registered against the appellant. Thereafter, the body of Pushpa was sent for post-mortem. P.W.4 Dr.Sanjay Jadhav conducted the post-mortem on the dead body of

Pushpa. He found ligature mark over the neck, which was 35 cm in circumference and 1/2 cm in breadth. He also found abrasion marks on both the wrists and on both ankles. On internal examination, he found congestion of trachea and bronchi and lungs. As per the post-mortem notes, the cause of death was "Cardio respiratory failure due to Brain Asphyxia due to external pressure over Trachea by ligature."

3. After the completion of investigation, the charge sheet came to be filed. In due course, the case was committed to the Court of Sessions.

4. The charge came to be framed against the appellant under Sections 302 and 201 of IPC. The appellant pleaded not guilty to the said charge and claimed to be tried. The defence of the appellant is that at the relevant time, he was working on night shift duty as a labourer and when he returned home on 31-01-2000 in the morning, he found that his wife was dead. Thus, it is seen that the appellant has taken the defence of alibi. In addition to this Mr.Sapkale learned Advocate for the appellant has submitted that some one may

have entered into the house of the appellant and subjected deceased Pushpa to sexual assault and thereafter committed her murder. After going through the evidence adduced by the prosecution, the learned Sessions Judge convicted and sentenced the appellant, as stated in Para 1 above. Hence this Appeal.

5. The conviction of the appellant is mainly founded on the evidence of father of deceased Pushpa i.e. P.W.5 Raghunath Marathe and her maternal uncle i.e. P.W.2 Bapusaheb Ingale. P.W.5 Raghunath has stated that his daughter was married to the appellant on 23-03-1998. After about 7 to 8 months of her marriage, he had been to Pushpa's house. At that time, Pushpa told him that her husband was suspecting her fidelity. Before Sankrant of year, 2000 P.W.5 Raghunath had been to the house of his daughter Pushpa. At that time Pushpa again told him that her husband suspects her fidelity, beats her and does not allow her to go to the neighbours. Raghunath told the appellant that he would take his daughter Pushpa back with him. However, the appellant promised him that he would behave properly.

Thereafter, Raghunath went back to his house. After some days, Raghunath received a message on telephone that Pushpa had expired.

. Mr.Sapkale learned Advocate for the appellant submitted that the evidence of P.W.5 Raghunath cannot be relied upon, because this witness has stated that when he went to the Police Station, his signature was obtained. Thereafter, the police told him to go away and the statement would be prepared. It is pertinent to note that as far as the evidence of Raghunath in his examination-in-chief is concerned, we have not found any major omissions or contradictions therein. Further he has stated that before stepping into the witness-box on that day or the earlier day, his statement was not read over to him. It is seen that P.W.5 Raghunath is an illiterate person. He is an agriculturist. Looking to all these circumstances, we are of the opinion that admission obtained from this witness would not make the evidence unreliable.

6. P.W.2 Bapusaheb is the maternal uncle of

deceased Pushpa. He has stated that on 27-01-2000, he had been to the house of Pushpa. He stayed there for a day and left the house on 28-01-2000. When he visited the house of Pushpa, Pushpa told him that her husband suspects her fidelity. Pushpa told him that her husband beats her and does not allow her to talk to anybody. Bapusaheb explained to the appellant that he should not behave in such a fashion. On 31-01-2000 Bapusaheb was informed that Pushpa had expired.

7. Mr.Sapkale learned Advocate for the appellant submitted that it was not possible for Bapusaheb to go to the house of Pushpa, as Bapusaheb had met with an accident in the month of January, 2000 and for about one and half months he was bedridden. On account of being bedridden, he was not visiting any place. Mr.Sapkale thus submitted that the statement of this witness that he visited the house of Pushpa on 27th and 28th January, 2000, is false and no reliance can be placed on the evidence of this witness. With reference to this submission, it is seen that Bapusaheb visited the house of Pushpa on 27th and

28th January, 2000. It has not been brought on record on behalf of the defence as to on what exact date Bapusaheb met with an accident. Had it been brought on record that he had met with an accident prior to 27th January, 2000, we would have found much substance in the above contention.

8. Besides the father and maternal uncle of deceased Pushpa, the prosecution has also examined an independent witness to show that the appellant used to quarrel with his wife Pushpa. The said witness is P.W.3 Nivrutti Bodake. The house of Nivrutti consisted of two floors. Nivrutti was residing on the ground floor and the appellant and his wife were residing in one room on the first floor. Nivrutti has stated that the accused was residing with his wife and brother Anil. Nivrutti has stated that his wife informed him that the appellant had quarrelled with his wife, hence Nivrutti warned the appellant that he should not quarrel with his wife Pushpa, otherwise, he should vacate the room. Thus, the evidence of this witness shows that the appellant was quarrelling with his wife Pushpa. The evidence of this witness specifically shows that it was the

appellant who was quarrelling with his wife and not other way round i.e. the wife of the appellant was quarrelling with him.

9. Mr.Sapkale learned Advocate for the appellant submitted that there was no motive for the appellant to kill his wife. As far as this submission is concerned, we find that the evidence of father and maternal uncle of Pushpa i.e. P.W.5 Raghunath & P.W.2 Bapusaheb respectively, clearly bring out the motive for the appellant to do away with his wife.

10. Mr.Sapkale submitted that the appellant was not at home on the night between 30th January, 2000 and 31st January, 2000, as he was working and his duty consisted of shifts, which included night-shift. Mr.Sapkale further submitted that on that night the appellant was working in the night shift. To support this submission, Mr.Sapkale brought to our notice the evidence of two defence witnesses i.e. D.W.1 Tulsidas Patil and D.W.2 Manohar Sirsat. We have carefully perused the evidence of both these witnesses. Though D.W.1 Tulsidas has admitted that there were three shifts

in their factory; first shift was from 7:00 a.m. to 3:00 p.m., second shift was from 3:00 p.m. to 11:00 p.m., and third shift was from 11:00 p.m. to 7:00 a.m., however, he has specifically stated that he does not know the accused before the Court.

11. As far as D.W.2 Manohar is concerned, he has stated that the appellant was working with him and in the month of January he had worked for 24 days. However, this witness has categorically stated that, "I cannot say whether he was attending the night shift. .... I cannot say, out of the workers who was working in what shift." Moreover, this witness is unable to state that which of the 24 days out of 31 days in January, the appellant was on duty. Thus, even though, two defence witnesses have examined, the defence has not been able to bring on record that the accused was on duty, on night-shift, on the night in between 30th January, 2000 and 31st January, 2000.

12. At this stage, we would like to advert to

the evidence of P.W.3 Nivrutti who was residing on the ground floor of the building in which the appellant was residing. Nivrutti has specifically stated that on 31-01-2000, when he was sleeping in his house, at 06:00 a.m., the appellant came to his house and woke him up. The appellant told him that his wife was sleeping and she was not waking-up. Nivrutti went upstairs with the appellant and there he saw the dead body of Pushpa with marks on the neck and wrists. Thus, it is seen that before 6:00 a.m., the appellant was aware that his wife was dead. He had gone to inform Nivrutti about this fact at 6:00 a.m.. This statement of this witness also belies the defence taken by the accused that he was working in the night-shift which is from 11:00 p.m. to 7:00 a.m.. In such case, if the appellant was not on duty in the late night, then, it would be natural on his part to be in his house.

13. The second defence taken by the appellant, as raised by Mr.Sapkale before us, is that some person may have subjected Pushpa to sexual intercourse and thereafter committed her murder. He has submitted that it has come on record that

it was possible to open the door by putting two fingers through the door. In support of this submission he has brought to our notice the evidence of P.W.1 P.C.Sarode, who has stated that, "I cannot say whether from outside, a closed door was opened by putting two fingers through." The appellant, his wife and his brother Anil were residing in one premises which consists of one room. The said room was on the first floor and P.W.3 Nivrutti resided on the ground floor. This fact is brought on record by P.W.3 Nivrutti. We have already come to the conclusion that the appellant was not on night-duty and he was in his house on the night between 30th & 31st January, 2000. Moreover, not only the appellant, but, his brother was also residing in the one room premises. In such case, it would not have been possible for a stranger to come into the room and subject Pushpa to sexual intercourse and thereafter commit her murder. Moreover, the theory of sexual intercourse is not borne-out by the medical evidence. No injuries to suggest forcible sexual intercourse have been brought on record.

14. Thereafter, Mr.Sapkale submitted that Anil, the brother of appellant, was residing with him in the same room. In such case, the prosecution ought to have examined Anil. According to him, Anil was the most natural and important witness. As far as this submission is concerned, it is seen that Anil was the brother of appellant and in such case, he would not have supported the prosecution case. Besides this, it is seen that as Anil was residing in the house of the appellant, Anil would be under the thumb of the appellant as he was obliged to the appellant for providing him accommodation. Thus, in such case, we do not find any fault with the prosecution in not examining Anil as a prosecution witness. In the present case, the appellant has examined two defence witnesses. If at all the appellant was of the opinion that his brother Anil was a material witness, he should have examined Anil as a defence witness. However, though two defence witnesses have been examined by the appellant, Anil has not been examined as a defence witness.

15. Mr.Sapkale thereafter contended that there was nothing to show that the death was preceded by

violence, hence it would not be a case of murder. He has pointed out that the glass-bangles, one on each wrist, were intact and the Tikali on the forehead of the deceased Pushpa was also intact. Thus, according to him this shows that there was no violence and hence it is not a case of murder. P.W.4 Dr.Sanjay Jadhav has conducted the post-mortem on deceased Pushpa. Dr.Jadhav noticed the following injuries :

> Ligature mark over the neck, 35 cm in circumference and 1/2 cm in breadth. Abrasion marks on both the wrists and on both ankles.

. In the opinion of Dr.Jadhav, the cause of death of Pushpa was :

> "Cardio respiratory failure due to Brain Asphyxia due to external pressure over Trachea by ligature."

. Deceased Pushpa was found lying on her bed with the ligature mark on her neck and abrasion marks on both the wrists and on ankles. From the injuries on the body of Pushpa and the cause of

death of Pushpa, it is clear that the death was not a natural death. From the nature of the injuries and the condition in which the body was found, a case of accidental death is ruled out. From the fact that Pushpa was found lying dead on bed with ligature mark on her neck and no rope or ligature was found around her neck, it is clear that the death was not suicidal. In such case, the only possibility is homicidal death. Even assuming that the Tikali and bangles were intact, it would not mean that a case of homicidal death was ruled out. Thus, we find no merit in this contention.

16. Thereafter, Mr.Sapkale submitted that had the appellant suspected the character of his wife, he would not have asked his father-in-law, not to take away his wife Pushpa. So also, when his wife Pushpa went to the house of her father, the appellant would not have brought his wife back. It is true that the appellant told his father-in-law that he should not take away Pushpa and he would behave properly in future. So also, he had brought his wife back from the house of her

father. However, this conduct on the part of the appellant cannot be seen in isolation and we do not think that a clean chit can be given to the appellant on account of this conduct. The circumstances which are brought on record in the evidence of various witnesses clearly show that the appellant was present in his home in the night between 30th January, 2000 and 31st January, 2000. The appellant was residing in a one room premises with his wife and brother. In this premises, the wife of appellant was found dead with a ligature mark on her neck. The appellant has not come forward with any reasonable or plausible explanation for the death of his wife in his matrimonial home. In such case, just on the basis of the conduct of the accused on these two occasions, we are not inclined to come to the conclusion that the appellant did not suspect the character of his wife and further that he has not committed the murder of his wife Pushpa.

17. Mr.Sapkale contended that the appellant has been falsely implicated in the present case and the entire evidence has been concocted by the investigating agency so as to rope in the

appellant in a false case. Mr.Sapkale has pointed out the evidence of panch-witness P.W.3 Bodake, who is also the panch-witness to the inquest panchnama. He has drawn our attention to his deposition wherein Mr.Bodake has stated that the Police told them that whatever incident happened was reduced in writing in the form of panchnama and they should put their signatures thereon. Thereafter, he was asked to put signature on the inquest panchnama without telling him or showing him the contents thereof. However, this witness in his cross-examination has not been shaken on the aspect that he had actually visited the spot and seen the dead body with injury marks on her body. Moreover, this witness has stated that during his deposition he has gone through the contents of panchnama and that contents are correct. Nothing has been elicited in the cross-examination of this witness, so as to dislodge his testimony that he visited the room of the appellant and saw the injuries on the body of Pushpa. Thus, we have no hesitation in relying on the evidence of this witness. Moreover, it is pertinent to note that the defence has not denied the injuries on the body of Pushpa, but, it is the

defence case that the injuries were caused by some other person to Pushpa and not the appellant. Thus, on perusal of all the evidence specially that of P.W.2, P.W.3, P.W.5, and other evidence on record as well as the medical evidence, we have no hesitation in arriving at the conclusion that it was the appellant alone who committed the murder of his wife Pushpa.

18. In the result, the conviction and sentence imposed on the appellant under Section 302 of IPC by the learned Sessions Judge is confirmed. The appellant is in jail. He shall serve out his sentence. Appeal is dismissed.

19. Registrar (Judicial) shall ensure supply of certified copy of this judgment, free of costs, to the appellant, through prison authorities.

**(N.V.DABHOLKAR,J.)**

**(SMT.V.K.TAHILRAMANI,J.)**